



City of Seattle

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Gregory J. Nickels, Mayor  
**Department of Planning and Development**  
D. M. Sugimura, Director

**CITY OF SEATTLE  
ANALYSIS AND DECISION OF THE DIRECTOR OF  
THE DEPARTMENT OF PLANNING AND DEVELOPMENT**

**Application Number:** 2406950  
**Applicant Name:** Micheal Ainsley  
**Address of Proposal:** 160 Roy St.

**PROPOSED ACTION**

Master Use Permit for a change of use of an existing commercial building (9,336 sq. ft.) to a mixed use development with no change to the existing commercial administrative office use. One apartment is proposed to be added at the top of the existing structure.

The following approval is required:

- **Variance** – To allow a mixed use structure not meeting the required 13' floor to floor height per SMC 23.47.008-C2.

**SEPA DETERMINATION:** ☒ Exempt ☐ DNS ☐ MDNS ☐ EIS

☐ DNS with conditions

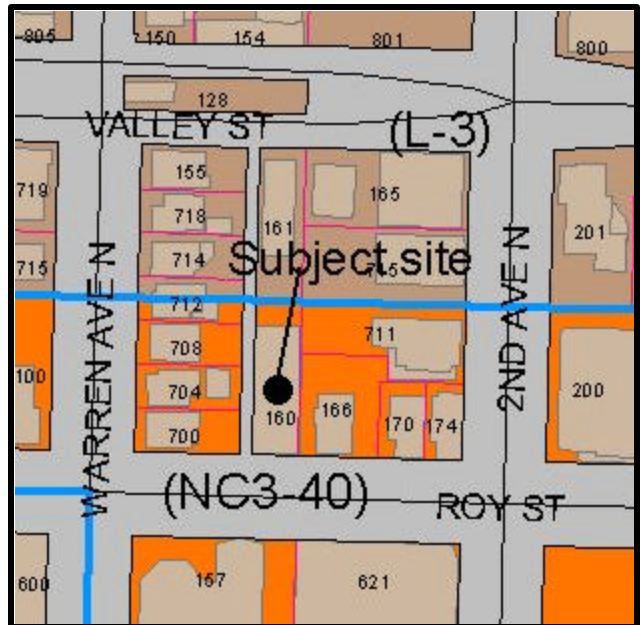
☐ DNS involving non-exempt grading or demolition  
or involving another agency with jurisdiction

## **BACKGROUND DATA**

### **Site and Vicinity Description**

The property is a rectangular shaped interior lot 3,500 sq. ft. in size. The site is zoned Neighborhood Commercial Three (NC3-40), with a 40 ft. height limit. The existing development on the site is a three-story brick and stucco building, with parking provided within the structure. Existing vehicle access is provided from the abutting paved alley to the west of the site. Currently portions of all three floors in the building are used as an office. The building has pedestrian access from Roy St.

Immediately north of the subject site are two multifamily apartment structures and northeasterly there is an office building. Located adjacent to the proposal on the southwest portion of the subject block are a mixed use structure building and a retail structure. Further west is Warren Ave., which has several residences (multifamily and single family) which face the street. There is an alley that bisects the block and provides access to both the dwellings off of Warren Ave as well as the two buildings north of the proposal site. As stated above, the alley currently provides access to the site. Surrounding zoning in the area consists of Lowrise Three (L3) and Neighborhood Commercial Three (NC3-40).



### **Proposal**

This proposal is to change the use of the 7,080 sq. ft. commercial structure to a mixed-use structure, with the office use to remain unchanged. The proposal includes a one story, one unit addition to the structure which will result in a change from a commercial only structure. The addition of the residential unit involves code standards that are not currently applicable to a commercial-only structure. The 13' first floor requirement for mixed use developments (SMC 23.47.008) is not met with the proposal.

The proposal would maintain the existing structure and footprint. However, there will be some interior and exterior alterations/improvements made to the structure. The open space will be provided in the form of a roof deck on the top floor. Since the structure doesn't meet current administrative office parking requirements, no parking is required for the first new or added dwelling unit (SMC 23.54.020-A4).

### **Public Comment**

No comments were received during the public comment period which ended on February 23, 2005.

## **ANALYSIS-VARIANCE**

Variances from the provisions or requirements of this Land Use Code shall be authorized when all the facts and conditions listed below are found to exist:

1. ***Because of unusual conditions applicable to the subject property, including size, shape, topography, location or surroundings, which were not created by the owner or applicant, the strict application of this Land Use Code would deprive the property of rights and privileges enjoyed by other properties in the same zone or vicinity;***

The unusual condition associated with the subject property is that the existing structure was built and has existed on the subject property prior to the adoption of the current zoning code and specifically the development standards for mixed use development (SMC 23.47.008). Since the building was originally constructed in 1975, the owner could not have known about the future requirements for mixed use development, specifically the 13' foot first floor height requirement. The mixed use development standards were codified in 1988; the applicant could not have foreseen this code change.

The existing structure is conforming to commercial requirements, but because the existing ceiling height is 10'-2", the change of use from commercial to mixed use development creates non-conformity with regard to the required first floor 13' floor-to-floor height requirement of SMC 23.47.008-C2. The applicant is proposing to maintain the existing first floor height of 10'-2". The proposal includes a one-story (one unit) multifamily addition. Mixed use development consists of residential and non-residential use in the same structure or in separate structures on the same lot and meeting the standards specified in SMC 23.47.008. Since the 13' floor-to-floor requirement on the 1<sup>st</sup> floor cannot be met if the existing three floors are maintained, the strict application of the Land Use Code would deprive the property rights and privileges enjoyed by others. It shall be noted that the Department has granted a variance (MUP 2307931 Permit No. 741847) for the required 13' first floor height requirement (166 Roy St) for the site directly east of the subject site which had the same issue. It would cause an undue hardship on the applicants to raise the existing first floor to 13' in order to add the apartment use to the structure.

2. ***The requested variance does not go beyond the minimum necessary to afford relief and does not constitute a grant of special privilege inconsistent with the limitations upon other properties in the vicinity and zone in which the subject property is located;***

Approving the proposed variance would not constitute a grant of special privilege and would not go beyond the minimum necessary to afford relief. The applicant is asking for a variance from the 13' height requirement for mixed use development as floors 1-3 exist and are to remain. The granting of the variance is not a grant of special privilege, other neighboring properties that have the same code compliance issue with adding residential to an existing commercial structure would be granted the same accord, depending on the specifics of the proposal. In this case, the request for the variance is the

minimum necessary as the 10'-2" first floor height exists and the relief from the 13' requirement is all that is required for the development to go forward. All other mixed development standards of SMC 23.47.008 will be met, so the intent of mixed use development is met by the proposal.

**3. *The granting of the variance will not be materially detrimental to the public welfare or injurious to the property or improvements in the zone or vicinity in which the subject property is located;***

The granting of these variances would not be materially detrimental to the public welfare, because the proposed change of use will not compromise the viability of commercial uses along Roy St, or the vicinity. Furthermore, it will not adversely affect bulk and scale, shadows, traffic, parking, noise and view impacts beyond what could be constructed if the structure were to meet the current requirement of first floor height of 13'. The foot print of the existing structure will not be increased and the additional height proposed by the current application will meet current height requirements. Also, no change to the storefront or the existing curb and sidewalk is proposed. Worth noting, the existing street front façade is glazed at 75% which produces good transparency meeting the intent of the mixed use developments. As a result, this variance if approved will not be materially detrimental to the public welfare or injurious to the property or improvements in the subject Neighborhood Commercial Zone.

**4. *The literal interpretation and strict application of the applicable provisions or requirements of this Land Use Code would cause undue and unnecessary hardship;***

The existing structure was built prior to the adoption of current development standards. The mixed-use development standards in commercial zones were designed for new development to be usable as non-residential uses and to be pedestrian friendly. The literal interpretation and strict application of the applicable provisions or requirements of the Code would require the applicant to perform major structural alterations and remodeling of the first floor to achieve the code required 13' first floor ceiling height. Meeting the code development standard of the first floor 13' requirement for the proposed mixed use development would be impractical due to the existing 10' first floor to ceiling height.

Therefore, denial of the requested variance would cause undue and unnecessary hardship because the existing structure and Land Use Code would not allow additions of residential units to the existing commercial structure without variance approval or, alternatively it would require major alterations to the existing structure. The proposal would allow the applicant to change the use of the existing structure to development that is compatible with the neighborhood commercial zoning of the property and compatible to surrounding uses in which the structure is located. Thus, this criterion is met.

**5. *The requested variance would be consistent with the spirit and purpose of the Land Use Code and adopted Land Use regulations for the area.***

The Neighborhood Commercial development standards seek to ensure that the scale of uses is compatible with the character and function of the commercial area. The requested variance in this

instance would not detract from the character of the surrounding commercial community. Granting the variance would not be contrary to the spirit and purpose of the Land Use Code regulations.

**DECISION - VARIANCE**

Variance – To allow a mixed use in a structure not meeting the required floor to floor height per SMC 23.47.008-C2 - **GRANTED**.

**CONDITIONS - VARIANCE**

None.

Signature: \_\_\_\_\_ (signature on file) Date: March 3, 2005  
Lucas DeHerrera, Land Use Planner  
Department of Planning and Development

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